IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.852 OF 1992.

The Union of India : Appellants.

versus

M/s.Shivaji Works Ltd. Solapur : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent. Heard Mr.Samant for the appellants. Nobody is present for the respondent, though served.

2. Mr.Samant, the learned counsel for the appellants, has raised only three contentions. Firstly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis.

3. Secondly, he contended that the tribunal

has awarded interest at the rate of 12% per annum. According to him, it should be 9% per annum in view of the judgment of this Court reported in **2005 (1) Mh. L.J. 165 [Maharashtra State Electricity Board vs. Union of India].** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the same judgment earlier, therefore, the rate of interest is to be reduced to 9% per annum.

4. Mr.Samant also contended that this was a case were the claimant had reloaded the material. That is on arrival of the goods destination station Tikekarwadi on 15th July 1980, the contents of wagon were unloaded in the railway premises. At that time the applicants felt that the contents were short and, therefore, requested the station master to effect the delivery after rewighment of the contents of the wagon. Accordingly, the contents were reloaded. Mr.Samant tried to contend that if the goods were reloaded, then the responsibility of the railway ceases to exist in case of short delivery.

5. I do not find any force in this

submission. Because the facts and circumstances on record and as observed by the trial court show that this prayer of reweighing the contents was not pressed by the applicants only to facilitate the railway authorities and the goods were reloaded in the same wagon as per instruction of the station master. Therefore, if the station master has given certain instructions and they were accepted by the applicants for the convenience and concession to the railway, then railway cannot be permitted to gain advantage from the situation. There is no merit in this contention. It is rejected.

6. So far as the contention of Mr.Samant regarding RR with the endorsement "Said to Contain" is concerned, the same is also required to be rejected. In this case, the claimants claimed compensation for short delivery of pig iron ex-Bokaro to Pune (and diverted to Tikerkarwaid) under R.R. No.305321 Invoice No.15 of 29th June 1980 and loaded in wagon No.SR.28567. The contention of the claimants is that total quantity of 57.400 M.Ts. of pig iron was loaded in the suit consignment and the weighment details showing this quantity as loaded

are recorded on the railway receipt. At the time of unloading the applicant found that the contents of the wagon were short. He requested the station master for reloading. The wagon was reloaded as per instructions of the station master. Thereafter the applicant wrote to Divisional Commercial Superintendent to depute his representative or the station master to witness the weighment of the wagon. That request is rejected. Thereafter the applicant took the delivery after unloading the wagon and rewighed the contents of wagon and found that the contents in the wagon weighed 23.155 Metric tonnes as against the actual weight of 57.400 M.Ts. According to the applicant, this shortage is due to the gross negligence and misconduct on the part of the railway. The defence is of total denial. According to the railway, the delivery was under clear signature. The applicants have filed their evidence by affidavit of Shri Vyas Vyankatesh Sakharam. The railway have filed their evidence by affidavit.

. The railway contended that the applicant has failed to prove that the wagon was loaded in the presence of railway siding foreman-employee.

The contention of the railway was that when the consignment was booked at Bokaro, deponent of the affidavit was not present. The railway produced Forwarding Note and Railway Receipt. Forwarding Note shows actual weight column as 57.400, and there is endorsement on the forwarding note to the effect that shows "weighment witnessed by the Railway Staff". It falsifies the contention of the railway that the wagon was loaded in the absence of railway employee.

7. Railways can raise defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of short delivery and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary.

. When the forwarding note shows that the weighment was witnessed by the railway staff and at the time of delivery the claimant requested the station master for reloading the wagon and

asked the Divisional Commercial to depute somebody and his requested was rejected, then the it is to be held that the claimant has discharged his burden to prove the short delivery. In the circumstances, the defence of said to contain is not available to the appellants.

8. So far as interest part is concerned, the contention of Mr.Samant is required to be accepted in view of the judgment of this court, as stated above.

9. Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment with proportionate

costs of the tribunal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE]